

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY BERNARD DAVIS,

Defendant-Appellant.

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UNPUBLISHED

May 7, 1999

No. 204886

Jackson Circuit Court

LC No. 9779288 FH

Before: Fitzgerald, P.J., and Doctoroff, and White, JJ.

MEMORANDUM.

Defendant was charged with delivery of less than 50 grams of a controlled substance, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv); possession with intent to deliver 50 to 224 grams of a controlled substance, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii); possession of 50 to 224 grams of a controlled substance, MCL 333.7403(2)(a)(iii); MSA 14.15(7403)(2)(a)(iii); possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2); and possession of a firearm by a person convicted of a felony, MCL 750.224f(a); MSA 28.421(6). Following a two-day trial, a jury found defendant not guilty of counts I through IV and guilty of count V. The trial court subsequently sentenced defendant as an habitual offender to four to ten years in prison. Defendant appeals as of right from his conviction. We affirm.

The first issue is whether the prosecutor presented evidence sufficient to support a conclusion that defendant possessed the revolver police discovered during the drug raid. We review the trial court record de novo in the light most favorable to the prosecution to determine whether a rational finder of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v Reeves*, 222 Mich App 32, 34; 564 NW2d 476 (1997), rev'd on other grounds 458 Mich 236 (1998). Possession of a firearm may be either actual or constructive. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). An individual has constructive possession of a firearm when "the location of the weapon is known and it is reasonably accessible to the defendant." *Id.*, 470-471. In the instant case, police discovered a .38 caliber revolver within a few feet of defendant. Police located defendant's fingerprints inside the box of .38 caliber bullets they discovered in defendant's duffel bag. Defendant possessed two .38 caliber casings that had previously been fired in the revolver. The bullets police

recovered from defendant's duffel bag, the bullets police removed from the chamber of the revolver, and the casings police retrieved from defendant were all manufactured by the same company. Viewed in the light most favorable to the prosecution, this evidence was sufficient to permit a rational finder of fact to conclude that defendant possessed the revolver police found during the raid. That there was a woman in the bedroom with defendant when the police raided the apartment does not undermine this conclusion. Possession of a firearm need not be exclusive. *Hill, supra*, 433 Mich 470.

The second issue is whether the trial court abused its discretion when it sentenced defendant to four to ten years in prison for felon in possession of a firearm, third habitual offender. We review an habitual offender sentence for abuse of discretion. *People v Cervantes*, 448 Mich 620, 627; 532 NW2d 831 (1995). On June 20, 1994, defendant was convicted of possession of less than twenty-five grams of a controlled substance and sentenced to three years' probation. Less than four months later, defendant was convicted of possession with intent to deliver less than fifty grams of a controlled substance and sentenced to two to twenty years in prison. Defendant subsequently committed the instant offense less than four months after being released from prison and placed on parole. Defendant has shown an inability to conform his conduct to the requirements of the law; the trial court did not abuse its discretion when it imposed a sentence that was well within the statutory limits. *People v Hansford (After Remand)*, 454 Mich 320, 326; 465 NW2d 460 (1997).<sup>1</sup>

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Martin M. Doctoroff

/s/ Helene N. White

<sup>1</sup> Defendant maintains that the trial court abused its discretion when it imposed a four-year sentence for the offense of felon in possession of a firearm, third habitual offender, because (1) the offense of possession of a firearm during the commission of a felony carries a maximum sentence of two years and (2) the jury acquitted defendant of four other offenses. Defendant failed, however, to cite any authority that supports his position that a trial court must consider, in any way, offenses of which defendant was not convicted.